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March 27, 1997

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Ms. Janice Myles
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

Dear Ms. Myles:

Enclosed please find one diskette copy of GTE Service Corporation's Comments filed today in CC Docket Nos. 95-20 and 98-10.

Please call me at (202) 828-4912 should you have any questions, or if you require any additional information.

Sincerely,

Kenneth J. Krisko

Enclosure

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MAR 27 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Computer III Further Remand Proceedings:	)	
Bell Operating Company	)	CC Docket No. 95-20
Provision of Enhanced Services	)	
	)	
1998 Biennial Regulatory Review --	)	CC Docket No. 98-10
Review of Computer III and ONA	)	
Safeguards and Requirements	)	

GTE's COMMENTS

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Its Attorneys

March 27, 1998

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GTE's COMMENTS

GTE Service Corporation and its affiliated telecommunications companies (collectively "GTE"),[1] hereby file their comments in response to the Further Notice of Proposed Rulemaking issued in the above-captioned dockets.[2] GTE welcomes the Commission's efforts to ensure the consistency of the Computer III/ONA regulatory regime with the pro-competitive goals of the Telecommunications Act of 1996 (the "1996 Act") and to address to the extent required the issues remanded by the Ninth Circuit in the last Computer III appeal. To this end, GTE submits that the requirements

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[1] GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., Contel of the South, Inc., GTE Communications Corporation, GTE Hawaiian Tel International Incorporated, and GTE Wireless Products and Services.

[2] Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements, CC Docket Nos. 95-20, 98-10, FCC 98-8 (rel. Jan. 30, 1998) ("FNPRM").

of the 1996 Act not only fully resolve the concerns of the Ninth Circuit, but also render many Computer III/Open Network Architecture rules redundant or otherwise unnecessary. Accordingly, such regulations should be removed consistent with Section 11 of the Communications Act of 1934, as amended.

I. SUMMARY

GTE supports the Commission's reexamination of its Computer III and Open Network Architecture ("ONA") requirements in light of the regulatory and competitive developments that have occurred since these rules were implemented. Most significantly, Congress has substantially altered the regulatory landscape by enacting the 1996 Act, which removes barriers to entry in the local exchange market and requires GTE and other incumbent local exchange carriers ("ILECs") to provide competitive carriers with access to their local exchange networks through resale, interconnection and the purchase of unbundled network elements ("UNEs"). As a result, competitive local exchange carriers ("CLECs") may use their own or the ILECs' facilities to compete with ILECs in providing telecommunications services to information service providers ("ISPs"). The availability of such competitive alternatives obviates any remaining concern regarding the potential for anticompetitive behavior in the provision of information services.

Accordingly, the Commission should reduce or eliminate the unnecessary burdens associated with the Computer III/ONA framework. In particular, GTE identifies below the annual, semi-annual and non-discrimination reports as well as the network

disclosure and other requirements that are no longer necessary in light of the 1996 Act and the development of competitive local exchange alternatives to ILEC services.

Further, GTE submits that Section 251 does not require ILECs to provide unbundled network elements to "pure" (*i.e.,* non-carrier) ISPs and that substantial practical problems prevent an FCC mandate to that end. By its terms, Section 251 is limited to requesting "telecommunications carriers," which excludes those entities only providing information services. Moreover, any mandated "Section 251-type" unbundled access would raise intractable pricing issues in the current regulatory environment and upset the competitive balances in the 1996 Act, such as distinctions between wholesale and retail markets and the collection and distribution of universal service support.

At the same time, GTE urges the Commission not to take any action in this docket that would erect barriers to the voluntary provision of unbundled element access service to ISPs where pricing issues can be resolved. Indeed, the Commission should address existing pricing and other regulatory issues in a manner that will facilitate and encourage the voluntary provision of such services.

Action consistent with GTE's recommendations herein will address the issues on remand from the Ninth Circuit Court of Appeals concerning the sufficiency of ONA unbundling.[3] More importantly, the Commission will have taken a critical step in fulfilling the 1996 Act's requirement that the Commission: (i) conduct a biennial review of its regulations affecting telecommunications service providers and (ii) repeal any regulation

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[3] Importantly, questions in the remand concerning the reimposition of structural separation requirements under Computer II do not implicate GTE.

that is found to be no longer necessary to promote the public interest as the "result of economic competition" between providers. That largely is the case with respect to the Computer III/ONA regime.

II. THE GOAL OF THIS PROCEEDING SHOULD BE TO REDUCE REGULATORY BURDENS BY ELIMINATING UNNECESSARY COMPUTER III/ONA REQUIREMENTS.

GTE generally supports the Commission's three broad objectives in this proceeding: (1) to allow consumers to obtain the benefits of innovative enhanced services; (2) to promote the continued competitiveness of the "already robust" information services market; and (3) to establish safeguards for the provision of enhanced services by GTE and the Bell Operating Companies ("BOCs") that "make common sense in light of current technological, market and legal conditions."[4] As explained below, the FCC can achieve these goals consistent with the Ninth Circuit's remand and the 1996 Act's biennial review mandate by eliminating unnecessary Computer III and ONA requirements that no longer are warranted in light of the 1996 Act and the emergence of competition in local exchange markets.

In 1995, the Commission applied its Computer III and Open Network Architecture non-structural and non-discrimination regulations to GTE with certain exceptions.[5] This

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[4] FNPRM ¶ 1.

[5] Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation, 9 FCC Rcd 4922 (1994) ("GTE ONA Order"); *see also* Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III), Report and Order, Phase I, 104 FCC 2d 958 (1986) (Phase I Order), *recon.*, 2 FCC Rcd 3035 (1987) (Phase I Recon. Order), *further recon.*, 3 FCC Rcd 1135 (1988), *second further*

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framework generally requires GTE to offer unbundled, basic network services under tariff to all users pursuant to an ONA plan,[6] to comply with the FCC's annual, semi-annual and quarterly ONA reporting requirements, and to notify the public of, and to disclose certain technical information regarding, network changes that may affect the provision of enhanced services. In extending these requirements to GTE, the Commission asserted that they would "facilitate the use of the network in the provision of enhanced services, thereby increasing the availability of competitively provided enhanced services to consumers."[7]

(...Continued)
recon., 4 FCC Rcd 5927 (1989), *Phase I Order and Phase I Recon. Order, vacated*, California v. FCC, 905 F.2d 1217 (9th Cir. 1990) (California I); Phase II, 2 FCC Rcd 3072 (1987) (Phase II Order), *recon.*, 3 FCC Rcd 1150 (1988), *further recon.*, 4 FCC Rcd 5927 (1989), *Phase II Order vacated*, California I, 905 F.2d 1217 (9th Cir. 1990); Computer III Remand Proceedings, 5 FCC Rcd 7719 (1990), *recon.*, 7 FCC Rcd 909 (1992), *pets. for review denied*, California v. FCC, 4 F.3d 1505 (9th Cir. 1993); Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571 (1991) (BOC Safeguards Order), *recon. dismissed in part*, Order, CC Docket Nos. 90-623 and 92-256, 11 FCC Rcd 12513 (1996); *BOC Safeguards Order vacated in part and remanded*, California v. FCC, 39 F.3d 919 (9th Cir. 1994), *cert. denied*, 115 S.Ct. 1427 (1995) (collectively "the Computer III proceeding").

[6] *See* Application of Open Network Architecture and Nondiscrimination Safeguards to GTE Corporation, 11 FCC Rcd 1388 (1995) (approving GTE's ONA plan with conditions).

[7] GTE ONA Order, 9 FCC Rcd at 4924-4925. In particular, the Commission asserted that one such benefit of ONA would be to "increase[ ] opportunities for all ESPs to develop new offerings and expand[ ] their markets for services through efficient use of the regulated local exchange network." *Id.* at 4924. The Commission maintained that a second benefit of application of ONA to GTE would be that the unbundling and non-discrimination requirements guard against the potential for discrimination in the provision of basic services to ESPs. *Id.* at 4925.

Notably, since 1980 the Commission consistently has declined to apply structural separation requirements (such as were later replaced by the non-structural safeguards of Computer III) to GTE for the provision of enhanced services.[8] In the 1996 Act, Congress similarly found no reason to require GTE to create a structurally separate affiliate to provide any of its services, including enhanced services. There can thus be no question that the issues concerning structural separation raised in the FNPRM should not apply to GTE. GTE also is not subject to a Comparably Efficient Interconnection ("CEI") plan filing requirement, which the Commission has proposed to eliminate for the BOCs.[9] Nonetheless, GTE will address issues related to the Computer III remand to the extent relevant to its unbundling or other obligations under the Computer III regime.

A. The 1996 Act's Regulatory Structure and the Emergence of Competition Support Reducing ONA and Computer III Requirements.

The Commission asks whether "the enactment and implementation of the 1996 Act, as well as other developments, should alleviate the Ninth Circuit's underlying

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[8] Indeed, in the Computer II proceeding the Commission reconsidered its earlier conclusion and specifically found that a structural separation requirement should not be applied to GTE because "maintaining the separate subsidiary requirement for carriers other than AT&T does not outweigh other public interest considerations." Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 84 F.C.C.2d 50, 75 (1980) (Computer II Reconsideration Order), *aff'd in part on further recon.*, 88 F.C.C.2d 512, 540 (1981) (Computer II Further Reconsideration Order) (subsequent history omitted).

[9] FNPRM ¶¶ 60-65.

concerns about the level of unbundling mandated by ONA."[10] GTE agrees with the Commission that the unbundling requirements of Section 251 and the other protections afforded by the 1996 Act address the court's concern on remand. As the FCC acknowledges, the extent of Section 251 unbundling -- even if only available to telecommunications carriers -- and other provisions in the 1996 Act should alleviate the court's concern that "the level of unbundling required under ONA does not provide sufficient protection against access discrimination."[11] Indeed, GTE maintains that the level of protection afforded by the 1996 Act and the emergence of competition permit the Commission to reduce substantially ONA/Computer III regulatory burdens in the manner proposed by GTE below. This approach addresses the court's remand concerns because the Act's safeguards allow the FCC to monitor, and the market to ensure, competition in a manner far more effective than these mechanisms.

In the 1996 Act, Congress fundamentally altered regulation of the local exchange market and created new opportunities for alternative providers to compete with incumbent carriers. Specifically, Section 251 of the Act requires GTE and other ILECs to provide requesting telecommunications carriers with interconnection and access to unbundled network elements at rates, terms, and conditions that are just, reasonable, and non-discriminatory.[12] This section also requires ILECs to offer telecommunications services for resale at wholesale rates.[13]

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10 *Id.* ¶ 29.

11 *Id.* ¶ 34.

12 47 U.S.C. § 251. *See also* Implementation of the Local Competition Provisions in

(Continued...)

Under the FCC's rules implementing Section 251, ILECs must, in addition to any state requirements, unbundle at least seven elements of their local network, including local loops, transport, switching elements, signaling, and operations support services.[14] Further, Section 251(c)(6) obligates ILECs to permit collocation of other telecommunication carriers' transmission equipment used to interconnect with the ILEC's network or to access UNEs.[15]

Together with other provisions of the Act, these statutory requirements adequately safeguard the interests of information service providers in a number of ways. Specifically, first, given the availability of alternative local exchange offerings

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the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15808-15809 (1996) (First Report and Order) ("Interconnection First Report and Order"), *aff'd in part and vacated in part sub nom.*, Competitive Telecommunications Ass'n v. FCC, 117 F.3d 1068 (8th Cir. 1997); *vacated in part on reh'g*, Iowa Utilities Bd. v. FCC, 120 F.3d 753, *further vacated in part sub nom.*, California Public Utilities Comm'n v. FCC, 124 F.3d 934, *writ of mandamus issued sub nom.*, Iowa Utilities Bd. v. FCC, No. 96-3321 (8th Cir. Jan. 22, 1998), *pet. for cert. granted*, Nos. 97-826, 97-829, 97-830, 97-831, 97-1075, 97-1087, 97-1099, and 97-1141 (U.S. Jan. 26, 1998).

[13] 47 U.S.C. § 251.

[14] Interconnection First Report and Order, 11 FCC Rcd at 15683-15775. In addition, the FCC's expanded interconnection rules allow ISPs that use transmission facilities to provide certain transport functions as part of their enhanced services. *See* Expanded Interconnection with Local Telephone Company Facilities, 7 FCC Rcd 7369 (1992), *recon.*, 8 FCC Rcd 127 (1992), *further recon.*, 8 FCC Rcd 7341 (1993), *vacated in part and remanded sub. nom.*, Bell Atlantic Telephone Cos. v. FCC, 24 F.3d 1441 (D.C. Cir. 1994) (subsequent citations omitted) (collectively "Expanded Interconnection"); 47 C.F.R. § 64.1401, 64.1402.

[15] 47 U.S.C. § 251(c)(6); Interconnection First Report and Order at 15779-15780. The collocation rules promulgated pursuant to Section 251(c)(6) augment the collocation requirements established in the FCC's Expanded Interconnection proceeding. *See* Expanded Interconnection, *supra* note 14.

under the Act, ISPs may obtain underlying telecommunications necessary to the provision of their services from sources other than the incumbent local exchange carrier, including an affiliated competitive local exchange provider. Second, an ILEC's potential ability to engage in discriminatory practices, assuming that it has any ability or incentive to do so, is further reduced by the non-discriminatory safeguards contained in Sections 251, 252, and 253 of the Act. These barriers to non-discriminatory conduct either extend directly to ISPs to the extent that the provider obtains interconnection or purchases UNEs though an affiliated telecommunications carrier, or indirectly if a non-carrier ISP purchases services from a CLEC. In either instance, the Act protects ISPs against the potential for access discrimination and promotes competition in the ISP market through increased availability of competitive service offerings.

Available market evidence bears out the foregoing analysis. For example, GTE has signed close to 450 interconnection agreements with CLECs in its operating territory, and approximately 1,000 agreements are presently being negotiated with competitive providers. Since passage of the 1996 Act, there is little question that ISPs are receiving the benefits of the increased availability of competitive local exchange carrier services. In some cases it appears that ISPs are obtaining competitive services by partnering with CLECs or establishing their own CLEC affiliates which may provide local exchange services and bypass the ILEC's offerings.[16] In other instances, an

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[16] *See* Fred Dawson, Internet Providers, CLECs Eye Wider Rollout of DSL Services, Multichannel News, Jan. 5, 1998, at 29 (detailing CLEC digital loop offerings to ISPs, including collocated offerings); Denise Pappalardo, PSINet Becoming One-Stop Shop For Net, Data and Voice Services, Network World, March 16, 1998, at 32 (ISP establishing CLEC services); ISPs Can Save on Local Access, POP Maintenance

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increasing number of CLECs and ISPs have sought to take advantage of integration efficiencies by merging their operations, thereby allowing an ISP to obtain telecommunications services directly from its affiliated carrier.[17] Still others have sought to collocate their operations or otherwise establish close business relationships, as suggested by the increasing amount of ISP traffic being delivered to CLECs by ILECs.[18] These competitive developments both resolve the Ninth Circuit's concerns and underscore the need to reduce and streamline ONA requirements consistent with Section 11 of the Communications Act.

B. Elimination of Unnecessary Computer III/ONA Regulations Is Required Under Section 11 of the Communications Act.

The elimination of unnecessary regulations is mandated by Section 11 of the Communications Act.[19] This section requires the Commission to review all regulations affecting telecommunications providers and repeal any regulation that is no longer

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with CLECs, Internet Week, Oct. 20, 1997 (noting examples of CLEC/ISP arrangements).

[17] *See* PR Newswire, GST Telecommunications Will Acquire Whole Earth Networks, Mar. 18, 1998 (CLEC purchasing an ISP); Wayne Carter, ICG Buys Netcom in CLEC/ISP Merger, Telephony, Oct. 20, 1997; Beth Synder, All the Data You Want, CLEC Launches One-Stop Shopping in Florida, Telephony, Jul. 28, 1997; MFS Leaps into Next Millennium with Acquisition of UUNet, Local Competition Report, May 13, 1996.

[18] *See generally* Request of Association for Local Telecommunications Services for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic, CCB/CPD 97-30 (Public Notice seeking comment released Jul. 2, 1997) ("ALTS Petition").

[19] *See* 47 U.S.C. § 161.

necessary to promote the public interest as the "result of meaningful economic competition between providers of such service."[20] Consistent with the view stated by Commissioner Harold W. Furchtgott-Roth, the Commission should conduct its inquiry in this docket consistent with the following well-established principle: "regulations are in the public interest only if their benefits significantly outweigh their costs."[21] For the reasons set out herein, further unbundling requirements as well as certain ONA reporting requirements and other aspects of the Computer III/ONA monitoring mechanisms identified below fail this test and should, therefore, be rejected or eliminated as appropriate.

III. THE COMMISSION SHOULD NEITHER MANDATE ADDITIONAL UNBUNDLING RIGHTS UNDER ONA NOR CREATE ARTIFICIAL BARRIERS THAT WOULD DISCOURAGE THE VOLUNTARY PROVISION OF UNBUNDLED FUNCTIONALITY TO END USERS.

In the FNPRM, the Commission asks whether it can and should extend "Section 251-type" unbundling rights to information service providers that do not provide underlying telecommunications services (*i.e.,* "pure ISPs").[22] GTE maintains that this proposal is neither consistent with the Act nor supported by sound policy. However, the Commission should not create any artificial regulatory barriers in this proceeding, and,

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20 47 U.S.C. § 161(a)(2).

21 Separate Statement of Commissioner Harold W. Furchtgott-Roth, Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Service, CC Docket Nos. 95-20, 98-10, at 2 (Jan. 30, 1998).

22 *See* FNPRM ¶¶ 95-96.

indeed, should remove existing impediments to the voluntary provision of unbundled access services to non-carrier ISPs.

A. Mandatory Extension of Unbundling Rights to "Pure ISPs" Would Be Inconsistent With Section 251 and the Public Interest.

1. Section 251 Does Not Provide a Basis for Mandating Unbundled Access.

The plain language of Section 251 limits the provision of interconnection and access to unbundled network elements to "requesting telecommunications carriers."[23] Because information service providers by definition are not telecommunications carriers under the Act,[24] these providers do not have rights to purchase Section 251 unbundled network elements. The Commission agrees, having found in the Interconnection Order that "enhanced service providers that do not also provide domestic or international telecommunications, and are thus not telecommunications carriers within the meaning of the Act, may not interconnect under Section 251.[25] Consistent with the discussion above regarding the Computer III remand issues, there is no reason for the

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[23] 47 U.S.C. § 251(c)(2), (3).

[24] GTE is already on record regarding the interpretation of the Commission's basic/enhanced distinction in light of the 1996 Act and may further address these issues in light of the FCC's upcoming universal service report to Congress. *See, e.g.,* Comment of GTE, CC Docket No. 96-45, DA 98-2 (filed Jan. 26, 1998).

[25] Interconnection First Report and Order, 11 FCC Rcd at 15990. In that same Order, however, the Commission did find that telecommunications carriers that have purchased UNEs under Section 251(c) may "offer information services through the same arrangement" provided that they also offer the underlying telecommunications services. *Id.*

Commission to second guess Congress' reasonable determination that Section 251-type unbundling need not be extended to ISPs in order to reap the pro-competitive benefits of the Act.

Moreover, mandated access to "Section 251-type" UNEs is unnecessary given the other competitive benefits that pure ISPs receive under the Act. Indeed, ISPs are now utilizing various arrangements to ensure that they either benefit directly (such as through merging operations or establishing a CLEC operation) or indirectly from competitive carriers' ability to obtain services or UNEs under Section 251. Of course, even absent such relationships, pure ISPs are free to purchase underlying telecommunications service from CLECs offering service through their own facilities, resale or access to UNEs. Further, to the extent that the FCC believes that existing ONA unbundling requirements should be retained, pure ISPs would remain free to purchase unbundled Basic Service Elements directly from GTE or the Bell Operating Companies.

2. Sound Policy Reasons Likewise Counsel Against Any Expansion of ONA Unbundling Requirements.

Mandated access to UNEs by non-carriers will pose a serious risk of subverting efforts to adopt rational and competitive pricing structures and upsetting the competitive balance established in the Act. For example, allowing non-carriers to purchase UNEs at rates established under Section 252 as currently implemented by many states would undermine the retail/wholesale pricing distinctions made in the Act. Such a result would eviscerate the market for retail telecommunications services (perhaps with respect to

virtually all sophisticated, large users of ILEC services), which would have a devastating impact on universal service funding.

Even imposing a different non-market based pricing scheme on such unbundled access service would still further impede the agency's and industry's ability to establish economically rational pricing structures and universal service support mechanisms and invite uneconomic arbitrage. For example, mandating that ILECs provide "Section 251-type" UNEs to ISPs would complicate the pending issues such as the access charge appeal (with respect to the FCC's determination to permit CLECs to evade access charges through the purchase of UNEs), the applicability of access charges and/or reciprocal compensation to Internet traffic,[26] and the collection and distribution of universal service support funding. In short, expanding the scope of Section 251-type unbundled access would unnecessarily serve to exacerbate many of the serious problems already encountered in implementing the 1996 Act.

B. The Commission Should Not Take Any Action That Would Create Barriers to the Provision of Unbundled Element Access to Pure ISPs.

Notwithstanding the concerns detailed above, GTE also urges the Commission not to take any action in this proceeding that would preclude carriers from offering unbundled access services on a voluntary basis where pricing issues can be resolved.

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[26] Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; End User Common Line Charges, 12 FCC Rcd 15982 (1997) (First Report and Order); *pets. to review filed* Southwestern Bell Telephone Company, Inc., et al. v. FCC, No. 97-2618, (8th Cir. filed Oct. 28, 1997); ALTS Petition, *supra* note 18.

To the extent appropriate pricing relationships can be maintained and universal service preserved, all parties may benefit from increased flexibility in the design of service offerings available to the public. It is critically important, however, to promote the industry's ability to establish economically rational pricing structures and universal service support mechanisms while discouraging uneconomic arbitrage.[27] Thus, ILECs should be permitted, like their competitors, to tailor such offerings based on marketplace considerations, including ISP demand for and the costs associated with offering these services.

The Commission can assist in fostering the creation of a hospitable environment for unbundled element offerings by properly addressing the existing regulatory issues that might discourage carriers from extending unbundled element access service to pure ISPs, including the ongoing disputes listed above. Absent a comprehensive resolution of all of these interrelated issues, inefficient and artificially-imposed rate structures could discourage and even prevent efforts to provide unbundled access offerings to pure ISPs.

In GTE's view, the ultimate answer to these concerns lies in allowing local carriers to establish more rational and consistent pricing structures, which do not impose pricing decisions based upon arbitrary classifications -- *i.e.,* by type of provider

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[27] In addition to these pricing issues, the FCC also should decline to follow the suggestion of the Association of Telemessaging Services International, Inc. to impose a joint marketing restriction on the BOCs' provision of basic and enhanced services on an intraLATA basis. *See* FNPRM ¶¶ 127-29. Such a restriction has never been contemplated for GTE and should not be considered here. This restriction not only is unnecessary given the regulatory safeguards discussed herein, but would also impose inefficiencies on consumers.

or use of service. Such pricing schemes for interconnection, access charges and other service offerings, together with an explicit universal service support mechanism applied on a nondiscriminatory basis, are the most desirable means of sending rational entry signals to market participants and allowing sustainable competition to develop.

IV. THE COMMISSION SHOULD REMOVE UNNECESSARY AND BURDENSOME COMPUTER III/ONA REPORTING REQUIREMENTS.

The FNPRM asks whether the Commission's annual, semi-annual, and quarterly ONA reporting requirements should be eliminated or modified consistent with its biennial review.[28] In particular, the Commission queries whether the information contained in these reports is still useful or relevant to promote competition or safeguard against discriminatory practices.[29] As set forth below, these reporting requirements can and should be removed because they are unnecessary in light of the 1996 Act and the availability of competitive local exchange services.

Annual Reports

Expressing concern that "certain aspects of its annual reporting requirements may be outdated and should be streamlined," the Commission seeks comment on whether elements of its annual ONA reporting requirements should be modified or eliminated.[30] These reports require GTE to include information on at least eleven

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28 *Id.* ¶¶ 99-102.

29 *Id.* ¶ 100.

30 *Id.* ¶ 104.

specific elements concerning the availability, implementation, and deployment of ONA services.[31]

The annual ONA reporting requirements should be eliminated given the availability of competitive alternatives to GTE's services and the modest demand for ONA offerings. For example, as the Commission recognizes, there appears to be little justification for requiring carriers to continue to report on the projected three-year deployment schedules for ONA because this information does not change significantly on an annual basis and because competitive markets and Section 251 network disclosure obligations make this information obsolete.[32] Finally, there is no place in a

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[31] GTE must include information on the following items in its annual ONA report to the FCC: (1) annual projected deployment schedules for ONA service, by type of service (Basic Service Arrangements ("BSAs"), Basic Service Elements ("BSEs"), and Complementary Network Services ("CNSs")), in terms of percentage of access lines served system-wide and by market area; (2) disposition of new ONA service requests from ISPs; (3) disposition of ONA service requests that have previously been designated for further evaluation; (4) disposition of ONA service requests that were previously deemed technically infeasible; (5) information on Signaling System 7 ("SS7"), Integrated Services Digital Network ("ISDN"), and Intelligent Network ("IN") projected development in terms of percentage of access lines served system-wide and on a market area basis; (6) new ONA services available through SS7, ISDN, and IN; (7) progress in the Network Interconnection Interoperability Forum ("NIIF") on continuing activities implementing service-specific and long-term uniformity issues; (8) progress in providing billing information including Billing Name and Address ("BNA"), line-side Calling Number Identification ("CNI"), or possible CNI alternatives, and call detail services to ISPs; (9) progress in developing and implementing Operation Support Systems ("OSS") services and enhanced service provider access to those services; (10) progress on the uniform provision of OSS services; and (11) a list of BSEs used in the provision of GTE's own enhanced services.

[32] To the extent that projected deployment reporting requirements are retained, GTE agrees with FCC's suggestion that carriers could make a one-time filing of a five-year deployment schedule at the time a new ONA service is introduced. *See* FNPRM ¶ 104.

competitive marketplace for mandating that carriers report new deployments of services such as SS7, IN, and ISDN. The interest in and ability to market these services to end-users and local carrier customers provides carriers with a powerful incentive to disclose this information where entities seek these services in a manner that does not discourage competitive innovation.

Semi-Annual Reports

The Commission also seeks comment on whether the ONA semi-annual filing requirements (which differ slightly for GTE and the BOCs) should be retained.[33] Noting that "considerable portions of the semi-annual reports of the BOCs appear to be redundant," the Commission tentatively concludes that the BOCs should be permitted to make one consolidated filing or posting for all generic information in their semi-annual reports and asks whether GTE should be allowed to join in such a filing.[34]

Instead of consolidating these reports, GTE submits that the Commission should remove the semi-annual reporting requirements altogether. First, there is little evidence to suggest this reported information is being used by ISPs given that GTE has received few, if any, ISP requests for a copy of its *ONA Services User Guide*, which GTE has been required to update and make available twice a year since 1995. Because this

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[33] In its semi-annual report, GTE must provide: (1) a matrix of its ONA services and the federal and state tariffing status for each service; (2) computer disks and printouts of data regarding state and federal tariffs; (3) a printed copy of its ONA Services User Guide; (4) updated information on the availability and status of 118 categories of network capabilities requested by ISPs; and (5) updated information on responses to the requests and matrices.

[34] FNPRM ¶ 109.

information appears to be of little value to ISPs, there is plainly no justification for requiring GTE to continue to incur the substantial administrative and financial burdens of preparing such reports.[35] Second, there is little need to continue information reporting on a semi-annual basis because most, if not all, of this information will change only if new ONA services are requested.[36] Accordingly, the Commission should eliminate the semi-annual reporting requirement, or at least consolidate this filing with the annual reports, if those reports are retained.[37]

Quarterly Non-Discrimination Reports

GTE disagrees with the Commission's tentative conclusion that the "nondiscrimination obligations for provisioning and performing maintenance activities established by Computer III should continue to apply to the BOCs and GTE."[38] This requirement is wholly unnecessary because GTE is already subject to Section 202(a)'s non-discrimination obligation for any federally-tariffed ONA services and comparable state obligations for any such state-tariffed services. Further, as noted above, the 1996 Act and the presence of local competition further serve as a constraint on GTE's ability

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35 The production costs for the ONA Services User Guide alone amount to approximately $145,000 per year.

36 FNPRM ¶¶ 110, 111.

37 GTE does not wish to join (and should not be required to join) any consolidated BOC filing or posting of semi-annual report information as proposed by the FCC. Given GTE's diverse operations relative the BOCs and information that is unique to GTE, it would not be more efficient (or less costly) for GTE to join any such consolidated filing or information posting.

38 FNPRM ¶ 114.

to discriminate in the provision of ONA services, assuming it had any incentive to do so. Thus, the Commission should eliminate the largely redundant and obsolete Computer III non-discrimination obligations.

For similar reasons, GTE urges the Commission to eliminate the quarterly non-discrimination reporting requirements because they are no longer necessary due to meaningful competition in the local exchange market. The degree of local competition and regulatory requirements of the 1996 Act provide an effective check on GTE's ability to discriminate in the quality of network services provided to competing ISPs. Accordingly, for the same reasons that such reporting requirements are being eliminated for AT&T, the Commission should no longer require the filing of quarterly non-discrimination reports.[39]

V. GTE AGREES THAT THE COMPUTER III NETWORK DISCLOSURE RULES ARE NO LONGER REQUIRED IN LIGHT OF SECTION 251.

GTE agrees with the Commission's tentative conclusion that the network disclosure rules adopted under Section 251(c)(5) of the Act should supersede the existing Computer III network disclosure rules.[40] As the Commission points out, GTE's and other incumbent LECs' network disclosure obligations under Section 251(c)(5)

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[39] The Commission should for the same reasons no longer require the filing of an annual affidavit concerning compliance with the Computer III non-discrimination obligations.

[40] FNPRM ¶ 122.

generally exceed the disclosure rules established in the Computer III proceeding.[41] For example, the "triggering" event for Section 251's disclosure obligation already includes the "make/buy" point applicable under the Computer III framework. Indeed, the FCC noted in its Second Interconnection Order that "[t]he disclosure obligations imposed by section 251(c)(5) are broader than those already adopted in the Computer III proceeding."[42] Further, GTE now provides public notification to all interested parties, as required by the FCC, of all network changes on a non-restricted Internet site.[43] This requirement is another example of how the Section 251 interconnection network disclosure requirements are more broad in scope than the existing Computer III requirements. Accordingly, the Computer III network disclosure rules duplicate Section 251 disclosure rules and should be eliminated.

VI. CONCLUSION

Consistent with the recommendations outlined above, the Commission should not mandate additional ONA unbundling for GTE, but should streamline or eliminate the unnecessary Computer III/ONA regulatory requirements. Such action addresses the

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41 *Id.*

42 Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 11 FCC Rcd 19392, 19486 (1996) (Second Report and Order and Memorandum Opinion and Order).

43 *Id.* at 19490.

Ninth Circuit's concerns, is mandated by Section 11 of the Communications Act, and would promote competition in the information services marketplace.

Respectfully submitted,

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